

Appendix 1:

Roopuu Apaarangi Waipiro *

Priorities for amendments to the Sale and Supply of Alcohol Act, 2012

Effective alcohol legislation can support communities to increase the health and wellbeing of individuals and families by minimising the harm from alcohol products. The legislation needs to give effect to te Tiriti o Waitangi and reduce the disproportionate harm experienced by Maaori.

The goal of Health Coalition Aotearoa is to promote the implementation of effective, evidence-based and fair policies to improve the health of the population.

Implementation of the Sale and Supply of Alcohol Act (2012) during the past 10 years has not achieved the goals parliament intended as set out in the Object of the Act. The harms from alcohol, outlined in the Object, remain unacceptably high in Aotearoa. These harms include cancer, injuries and death from motor vehicle crashes, family violence and harm to children including Fetal Alcohol Spectrum Disorder.

Object of the Sale & Supply of Alcohol Act (2012)

- (1) (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
(b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- (2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—
 - (a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and
 - (b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

*This document reflects a consensus view of the Roopuu Apaarangi Waipiro and does not necessarily reflect the views of individual panel members. This version is current at 25.08.21. It is a living document and may be amended in response to new information.

1. Ensure the aims and operation of the Act meet the Crown's obligations to Maaori under Te Tiriti o Waitangi.

Maaori aspire to a partnership with the Crown that upholds the mana of tangata whenua and provides for the tino rangatiratanga and equity guaranteed in Te Tiriti. The operation of the Act and related health outcomes demonstrate a failure of the Crown to meet these obligations; Maaori are twice as likely to die prematurely from alcohol attributable causes compared with non Maaori. This failure is currently the subject of a Waitangi Tribunal claim (Wai 2624). Proposed amendments to the Act will drive ngaa mahi, ngaa tahi (collaborative activities) with Maaori and enhance protection of Maaori wellbeing in key aspects of the alcohol control system. Changes should be defined in appropriate consultation with Maaori and should consider amendments aligned with claim Wai 2624, including:

- **Insert a Tiriti Clause that provides for how the Act will recognise and respect the Crown's responsibility to take appropriate account of the principles of Te Tiriti o Waitangi.**
- **Include in the provisions of the Act how those provisions will recognise and respect the Crown's responsibility to give effect to Te Tiriti o Waitangi.**

2. Strengthen national limits on availability of alcohol

For local authorities without a Local Alcohol Policy (LAP), the default national maximum trading hours apply. These are 8am to 4am for on-licences and club licences and 7am to 11pm for off-licences. Although Councils have sought to restrict these hours further through their LAPs, the legal appeals against such proposals by alcohol retailers has resulted in many Councils adopting trading hours close to the default hours. The default trading hours provide for alcohol to be accessible late into the night, largely to young adults. Reducing the default hours will contribute to reducing harm, while leaving the option open for further reductions in availability through local mechanisms e.g. zoning, or LAPs (if retained).

- **Reduce legislated trading hours to 9am to 9pm for off licences, 9am to 2am for on licences and 9am to 12am for club licences**

Reducing the accessibility of alcohol can also be achieved by increasing the minimum legal age to purchase alcohol. Following the lowering of the purchase age from 20 to 18 years in 1999, research has shown an increase in a range of alcohol-related harms to young people. Young people experience more harm from their drinking than other age groups and so the longer a young person delays drinking, the more they are protected from these harms and from effects of early heavy drinking on alcohol harm later in life. Also, around 50% of all alcohol abuse and dependence cases in New Zealand are developed by the age of 20 years. A purchase age of 18 means that we have secondary school students who can legally purchase alcohol, and inequities in drinking and harm are already evident at this early age. Whilst drinking has declined among some groups of young people in the past decade, the prevalence of drinking and binge drinking remains extremely high, especially among young men.

- **Raise the minimum purchase age to 20**

The availability of alcohol via remote alcohol sales has increased in recent years and has accelerated during the COVID-19 pandemic. Following the classification of online alcohol retailers as essential businesses permitted to operate during lockdown, physical bottle stores developing an online presence proliferated.

Currently, a remote sellers licence is only required for an off-licence that only sells alcohol remotely (e.g. via the internet, telephone, mail order, etc.). An off-licence that sells alcohol on premises (e.g. supermarket, bottle store, etc.) is permitted to also sell alcohol remotely, without the need for a remote sellers licence. Requiring all off-licence holders that sell remotely to obtain an appropriate remote sellers licence would allow assessment of their compliance with the Act.

- **Require all remote sellers (including bottle-stores) to have a remote licence for alcohol delivery.**

Trading hours for remote sellers are currently inconsistent with other relevant legislation and policy in a number of ways. Section 59 of the Sale and Supply of Alcohol Act 2012 permits remote delivery from 6am to 11pm, an hour longer than the national default hours; remote sales and delivery are exempt from the trading hours in Territorial Authority LAPs; proof of ID at delivery is not mandatory; and alcohol can be left on a door-step unattended. Rapid delivery of alcohol in less than two hours is of particular concern, given it increases accessibility of alcohol especially during active drinking occasions.

- **Bring online delivery in line with legislated trading hours, require age ID on delivery, and mandatory training, especially for immediate delivery services.**

Local Alcohol Policies (LAPs) are not mandatory. Since 2012, just over half (61%) of the territorial local authorities (TLAs) have adopted a Local Alcohol Policy. However, LAPs do not apply to existing licences (except for provisions relating to trading hours and discretionary licence conditions), meaning councils do not have the power to reduce licence numbers, despite alcohol outlets being more common in high deprivation areas and linked to higher hazardous drinking in vulnerable groups including Māori.

LAPs have been extensively appealed by the alcohol industry, resulting in changes that almost always made the policy less restrictive. Considerable financial costs have been incurred by public health agencies, councils and police. There is no evidence that this approach is effective and preferable to national level regulation and local licensing input.

- **Remove Local Alcohol Policies (LAPs)**

3. Eliminate all commercial marketing of alcohol

High levels of alcohol marketing in digital and other media, and alcohol branding of local and national events, cause early initiation and heavier drinking by young people, and also affect adults. Tamariki Māori are exposed to five times as much alcohol marketing and Pacific children three times as much compared with others. Complete protection, by ensuring an environment free from marketing, as has been legislated for tobacco, is needed to allow freedom from misleading and harmful promotion of alcohol products.

- **Remove alcohol marketing from all media including digital marketing and physical signage, in line with legislation for tobacco marketing**

Sponsorship of sporting and cultural events are marketing opportunities to associate brands of alcohol products with exciting and pleasurable experiences. Buying out alcohol sponsorship, as was done with tobacco, will support organisations while ensuring safer environment.

- **Remove alcohol branding (sponsorship) of all events, including sports and cultural activities**

4. Reform alcohol licensing processes

Decisions made by District Licensing Committees are highly variable, both within and between DLCs. This results from differences in composition, expertise and performance of DLCs and a lack of consistency in the criteria used for decisions. Licensing processes should be redesigned in partnership with Māori.

- **Give effect to te Tiriti o Waitangi**
- **Replace District Licensing Committees with Commissioners (Similar to the process within the Resource Management Act)**
- **Commissioners to be engaged in all circumstances that currently require a hearing**
- **Crown and Māori to reach agreement on new appointments to ARLA and Commissioners**
- **Ensure no conflict of interest, actual or appearance of bias in licensing process from the community's point of view.**
- **Strengthen clause 192(5)(a) to ensure Commissioners, ARLA members and licensing inspectors have no connection to the alcohol industry and/or related interests at appointment and throughout their involvement in the alcohol licensing process.**

Despite well-meaning criteria for licence determination, the usual level of licence application information provided is simply stating the applicant will meet the minimum legal requirements. Agencies and the public are required to have counter evidence. The threshold to grant is raised when applicants are required to prove their operation can be tailored to the community and will not increase harm.

- **Place onus of proof on applicants to show that new premises are necessary, desirable and have a low risk of increasing alcohol related harm.**

A priority of the Act was increasing community voice in local decisions, but the licensing process has not made community involvement easier and Māori feel excluded. Active community participants are burdened by multiple applications over time and become exhausted by the process. It has been critiqued as being legalistic despite the licensing authorities being commissions of enquiry not courts. Communities are penalised by lack of resources and expertise, and forced into an unfamiliar, often culturally inappropriate and hostile, legal environment. Community voice must be raised to be an equal voice.

- **Reflect clearly that the process is an enquiry not court**
- **Remove cross examination from the process like the Resource management Act.**
- **Expand and simplify criteria for eligibility to object to a licence, after Māori and wider community consultation**
- **Improve processes to support wider participation e.g. recognition of tikanga, te reo, and practical support for submitters**
- **Require notification of Māori when new licence applications are received**
- **Require TLAs to develop effective systems to proactively notify residents of new applications, such as posts to community Facebook pages, and extend the notification period to 3 months.**
- **Place online all licence applications once received, including objections and agency reports, whether they opposed or not, for transparency and natural justice.**
- **Expand the 15 working day reporting window to allow consultation with Māori**

5. Monitor alcohol sales and availability

At present, sale and supply data for alcohol are not supplied to the government. This intelligence would be vital to policy development, informing local licensing decisions and the planning of social and health sector activities to mitigate alcohol harm.

- **Implement S.397 to require all licensees to supply comprehensive sales data readily and transparently for both on and off-license sales. Aggregated data should be accessible at a local level.**
- **Remove the restriction in s397 that only permits the collection of sales data for the purpose of any investigations in relation to the possibility of introducing minimum pricing schemes for alcohol**

Collection of data on licensees, their hours and locations, and the licence application process is also fragmented across a range of territorial authority systems and not stored in effective form for monitoring purposes.

- **Licensing process: Keep a central record of all licence applications received and their status, by type, number of community objections, and including the decision-making pathway i.e. decided on the papers; hearing held at local level or ARLA; appeal hearing at ARLA or in higher courts; outcomes at any stage of the process including applications withdrawn, refused, granted, and renewed.**
- **Ensure licensee details have quantitative data on hours of supply and geographic location of the outlet**